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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MICHAEL COOK,	)	No. C 07 5085 RS
	)	
Plaintiff,	)	<b>DEFENDANT'S REPLY BRIEF IN</b>
	)	<b>SUPPORT OF ITS MOTION TO</b>
v.	)	<b>DISMISS PLAINTIFF'S COMPLAINT</b>
	)	
SOCIAL SECURITY ADMINISTRATION	)	Date: July 9, 2008
	)	Time: 9:30 a.m.
Defendant.	)	Judge: Honorable Richard Seeborg
	)	Location: Courtroom 4, 5 <sup>th</sup> Floor

On June 12, 2008, plaintiff filed document 24, entitled "Notice for Claim of Delivery, Summary of Judgment, Motion Opposing Defendants' Motion to Dismiss." Defendant Social Security Administration herein briefly responds to this filing.

The substantive issues raised in plaintiff's June 12, 2008, filing are addressed in defendant's motion to dismiss filed June 2, 2008, and need not be repeated here. Suffice it to say that plaintiff does not deny the following facts in his opposition papers:

Fact Number 1: Plaintiff has been notified that he has been scheduled for a telephonic hearing before an Administrative Law Judge on June 24, 2008.

Fact Number 2: In the event the Administrative Law Judge finds against plaintiff at that telephonic hearing, plaintiff has the right to appeal.

Fact Number 3: Plaintiff has not fully exhausted his administrative remedies until he participates

DEFENDANT'S REPLY BRIEF  
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1 in that telephonic hearing and appeals any resulting adverse decision.

2 Fact Number 4: Plaintiff was incarcerated at the time the disputed checks were issued to him.

3 These undisputed facts entitle defendant to a dismissal with prejudice of the subject lawsuit on  
4 one or both of the following grounds: (1) Plaintiff has not exhausted his administrative remedies.  
5 (2) Even if plaintiff had exhausted his administrative remedies, he is not entitled to the disputed  
6 checks because he was incarcerated at the time they were issued and therefore was not legally  
7 entitled to them to begin with.

8 Accordingly, defendant requests that this action be dismissed with prejudice.

9  
10 Respectfully submitted,

11 Dated: June 18, 2008

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20 United States Social Security Administration

21  
22 By: /S/  
23 JAMES A. SCHARF  
24 Assistant United States Attorney  
25 Attorney for Defendants  
26  
27  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

**DEFENDANT'S REPLY BRIEF IN SUPPORT OF ITS MOTION  
TO DISMISS PLAINTIFF'S COMPLAINT**

**MICHAEL COOK v. UNITED STATES OF AMERICA**  
**NO: C 06-05950 RS**

to be served this date upon the party(ies) as follows:

☒ **FIRST CLASS MAIL** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

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☐ **FEDERAL EXPRESS**

☐ **HAND-DELIVERED**

to the parties addressed as follows:

**Michael Cook (pro se)**  
**T-79529**  
**Kern Valley State Prison**  
**P.O. Box 6000**  
**Delano, California 93212-6000**

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 18<sup>TH</sup> day of June 2008, at San Jose, California.

/S/

\_\_\_\_\_  
Mimi Lam  
Legal Assistant